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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE: ) CHAPTER 13  
)  
) CASE NO. 03-65984  
CARL EDWARD HARPER, )  
) JUDGE RUSS KENDIG  
Debtor. )  
)  
) **MEMORANDUM OF DECISION**  
) **(WRITTEN OPINION)**  
)

Attorney Wylan W. Witte (hereafter "Witte") filed an application for compensation and a motion to withdraw as counsel on June 30, 2006. Hearing was held on July 26, 2006. Debtor Carl Edward Harper (hereafter "Harper") and Witte appeared at the hearing, at which the court ordered the parties to file additional documentation in support of their positions. Both parties have complied with the court's instruction.

The court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334(b) and the General Order of Reference entered in this district on July 16, 1984. This is a core proceeding over which the court has jurisdiction pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409(a).

**BACKGROUND**

Witte was retained as Harper's attorney in 2003 for the purpose of filing a chapter 13 bankruptcy case. During the case, the mortgage company filed two motions for relief from stay. The first motion was denied and the second motion resulted in the entry of an agreed order. It is the second of these motions that seems to have been the catalyst for a breakdown in the parties' relationship.

It is Harper's position that he was current on the mortgage when the second motion for relief from stay was filed. Witte, in turn, indicates that Harper did not have sufficient evidence to prove that he was current and therefore had no defense to the motion for relief from stay, so he entered into an agreed order which contained specific language protecting Harper in the event

he did prove he was current. Harper thereafter filed a grievance with the Stark County Bar Association (hereafter "SCBA"). The SCBA did not find any violations of ethical conduct. Harper appealed to the Supreme Court of Ohio, which found "there is no substantial, credible evidence of misconduct by Attorney Witte [and a] review of the relevant documents reflects that Attorney Witte attempted to zealously represent [Harper's] interests."

Through this, the parties relationship deteriorated. Both sides allege inappropriate conduct by the other and it is clear that there was a substantial breakdown in communications and in the attorney-client relationship. Harper has expressed his displeasure over the services rendered, the cost of those services, and has had inappropriate communications with Witte, while Witte admits to losing his temper with Harper. At the hearing, Harper admitted that he sought other counsel but could not afford to retain new counsel. Either party's description of the history of the relationship stands as proof that the relationship is wholly dysfunctional and beyond repair.

Harper signed a motion to withdraw filed with the court on April 4, 2006. The premise of the previous motion was that the parties agreed to the withdrawal and Harper had indicated he had other counsel. At the first hearing, however, Harper said he was not in agreement, and, that being the only basis alleged in the motion, the court denied the motion to withdraw. That action prompted the filing of this motion which sets forth the communication problems between the parties. Counsel believes that he can no longer effectively represent Harper in this matter because of the "irreconcilable differences" which have arisen.

## DISCUSSION

### *I. Motion to withdraw*

Whether to grant or deny a motion to withdraw by counsel is a serious matter, particularly in an on-going chapter 13 case. Consequently, courts are hesitant to allow an attorney to initiate a case and subsequently abandon a client in the middle of the proceedings absent a compelling reason. In re Albert, 277 B.R. 38 (Bankr. S.D.N.Y. 2002); In re Edsall, 89 B.R. 772 (Bankr. N.D. Ind. 1988) (citing Smith v. Anderson-Tulley Co., 608 F. Supp. 1143, 1146-47 (D. S.D. Miss. 1985)). In a similar vein, the code of professional responsibility and the disciplinary rules which govern the bar offer few opportunities for a free pass at withdrawal and permissive withdrawal is imbued with the goal of protecting a client.

In spite of the overarching concern of protecting a client, the court recognizes that it would be folly to force a continued attorney-client relationship when the relationship is irreparably broken. The parties have reached that point. Harper is not pleased with Witte's demeanor, treatment or services rendered by Witte, as evidenced by his grievance complaint and appeal of the decision on that complaint, his search for alternate counsel, and his signature on the first motion to withdraw. Some courts suggest that the filing of a grievance indicates a lack of confidence evidencing a termination in the attorney-client relationship. See Brown v. Johnstone, 5 Ohio App.3d 165 (1982); Koerber v. Levey & Gruhin, 2004 WL 1344834 (Ohio App. 9 Dist. 2004) (unpublished).

Even if the grievance, and subsequent appeal, did not result in the termination of the parties' relationship, the Code of Professional Responsibility permits an attorney to withdraw upon demonstration "the client has 'render[ed] it unreasonably difficult for the lawyer to carry out his or her employment effectively.'" Graham v. Audio Clinic, 2005 WL 578999 (Ohio App. 3. Dist. 2005) (unpublished) (citing DR-2-110(C)). Based on the information provided by both parties, the court concludes that the parties reached an impasse in their communications, particularly as it relates to the second motion for relief from stay, which has created an adversarial environment between the parties. This environment eliminates the possibility of further effective representation. Therefore, the court will grant Witte's motion to withdraw.

## *II. Application for additional compensation*

Counsel filed an application for additional compensation seeking a total of \$1,515.00 in fees. Counsel's initial fees were \$1,050.00 and he received \$150.00 prior to the filing. Thus, Witte is requesting the court allow him additional compensation of \$465.00. The disclosure of compensation filed with the court contains the following language:

Fees paid to date covers (sic) services through the 341 hearing only.  
Any and all other services will be billed at \$150.00 per hour. An  
additional retainer fee will be required if any adversary proceedings  
are filed/started.

Harper does not contest the fact that Witte rendered the services in the itemized list supporting the application, nor did he present any evidence to demonstrate the services were not provided.

Upon review, the time expended appears reasonable. The disclosure clearly indicates that additional fees may accrue during the course of the case. In light of these facts, the court will allow the fee application.

## CONCLUSION

Although the court frowns on allowing counsel to withdraw midway through a trip down the rapids, the facts of this case indicate that the parties' relationship is irretrievably broken. Harper has filed a grievance and an appeal against Witte, has made an effort to seek other counsel, and signed a motion to allow Witte to withdraw as counsel. Harper says Witte has been rude and demeaning and has not effectively represented him to this point. The differences between the parties cannot be reconciled to allow for effective representation. The court grants Witte's motion to withdraw as counsel.

Witte's fees were clearly disclosed and the itemization is reasonable for the work performed. Harper has not objected to the fees or offered any proof that the services were not performed, so the court will allow the requested fees.

An appropriate order shall be entered forthwith.

/s/ Russ Kendig  
Russ Kendig  
United States Bankruptcy Judge

SEP 15 2006

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